IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

S.B.CRIMINAL REVISION PETITION NO. 268/2007

(Om Prakash V/s State of Rajasthan & Anr.)

Date of Order : 26/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Pradeep Choudhary for the petitioner.
Mr. V.R.Mehta, P.P.
Mr. Sandeep Mehta for the respondent No.2.

BY THE COURT:-

By the instant criminal revision petition under Section 397 Cr.P.C. r/w Section 401 Cr.P.C., the petitioner complainant has challenged the order dated 29.3.2007 passed by Judicial Magistrate, Osian, district Jodhpur (for short 'the Judicial Magistrate' hereinafter), whereby on filing the challan against the respondent No.2 for the offence under Sections 363, 366, 323, 376 (2)(G) and 120-B IPC, the Judicial Magistrate directed the police to produce respondent No.2 Vijay Kumar @ Bhanwar Lal before the Juvenile Justice Board as he was a juvenile on the date of commission of crime. Aggrieved by the order of the

Judicial Magistrate declaring the respondent No.2 juvenile without determination of the age as envisaged under Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Juvenile Act' hereinafter), the petitioner has filed the instant revision petition.

I have heard learned counsel for the parties and carefully gone through the order impugned.

It appears that the allegation against the petitioner and co-accused Subhash is that they abducted a minor girl of 13 to 14 years of age and subjected her to gang rap. After investigation, the police prima-facie came to the conclusion that the offences noticed above are made out and filed challan before the Judicial Magistrate for committal to the Court of Sessions. At that time, the respondent No.2 raised an objection that he cannot be committed to the Court of Sessions and tried as at the relevant date of occurrence he was not above the age of 18 years and as such he is juvenile. The Judicial Magistrate without making any inquiry with regard to the determination of the age as envisaged under Section 49 of the Juvenile Act held the respondent No.2 juvenile and directed the police to produce him before the Juvenile Justice Board.

Section 49 of the Juvenile Act deals with presumption and determination of age and provides that where it appears to the competent authority that person brought before it under any

of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

In the instant case, no inquiry whatsoever has been made with regard to the age of the respondent No.2 as also no evidence has been adduced by either of the parties with regard to the age of the respondent No.2 and therefore, in my view, the Judicial Magistrate fell in error in declaring the respondent No.2 as juvenile without making any inquiry and recording any evidence.

Learned counsel for the petitioner submits that when an offence is exclusively triable by a Court of Sessions, the Judicial Magistrate has no role except to commit the case to the Court of Sessions as envisaged under Section 209 Cr.P.C.

Section 209 Cr.P.C. reads as under:-

> "209. Commitment of case to Court of Session when offence is triable exclusively by it.- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-
>
> (a) commit, after complying with the provisions of Sec.207 or Sec. 208, as the case may be, the case to the Court of

> Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment had been made.
>
> (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
>
> (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
>
> (d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

Thus, from a plain reading of Section 209 Cr.P.C., it is clear that when a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit, after complying with the provisions of Sec.207 or Sec. 208, as the case may be, the case to the Court of Session. Section 207 and 208 Cr.P.C. deals with supply of the police report and other documents to the accused. Thus, the role of the Magistrate is limited in a case where the accused is brought and produced before the Magistrate by police along with the challan papers and if the Magistrate comes to the conclusion that the offence is triable exclusively by a Court of Sessions, then after supplying the copies of police challan papers, the statement and the documents to the accused to commit the case to the Court of Session.

In the instant case, in my view, the Judicial Magistrate failed to follow the prescribed procedure as envisaged under Section 209 Cr.P.C. and therefore, the order impugned deserves to be set aside.

In the result, the revision petition is allowed and the order impugned dated 29.3.2007 passed by the Judicial Magistrate, Osian is set aside. The Judicial Magistrate shall proceed in accordance with the provisions of Section 207, 208 and 209 Cr.P.C. However, it will be open for the respondent No.2 to move before the Court to which the case is committed for determination of his age if he claims to be a juvenile and if such an application is moved by the respondent No.2, the Court to which the case is committed shall determine the age of the respondent No.2 in accordance with law. Since the revision petition itself has been decided, the application being Cr.M.A. No.292/07 seeking vacation of the interim order stands disposed of.

(H.R.PANWAR),J.

rp